IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Appellate Side

Writ Petition No.6955 of 2003

Shri Laltaprasad S Singh... Petitioner

vs

Surajprasad C Mishra and ors.. respondents

Mr. Akhilesh Upadhyay for petitioner

Mr. C.R.Sonawane for respondent no.l

CORAM : A.P.SHAH J.

Dated 28.9.2005

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l. Heard learned counsel for the petitioner. The respondents are absent despite service.

2. This petition under Art 227 takes exception to the order passed by the appellate bench of the Court of Small Causes dismissing the Misc Notice No.289 of l989 taken out by the petitioner for setting aside the order of dismissal of the appeal dated 25.l.l989 and restoration of the appeal. The notice was taken out on 28.3.l989.

3. It is the case of the petitioner that on

20.l.l989 petitioner left for his native place and came back to Mumbai on l5.3.l999. It is his case that there was dispute in the family regarding land and therefore he had gone to native place and could return back to Bombay only on l5.3.l998. In support of his case the petitioner has filed his own affidavit as well as affidavit of his advocate. The application has been rejected by the lower court solely on the ground that there is no corroborative evidence to show that the petitioner was out of station during the relevant time. It is not possible to agree with the view taken by the lower court. The affidavits of the petitioner as well as his advocate is sufficient evidence to establish petitioner's absence from Mumbai at the relevant time. In my opinion the lower court has taken a rather hyper technical view of the matter in rejecting the application.

. In the result the impugned order is quashed and set aside. Misc Notice No.289 of l989 stands allowed.Appeal stands restored to file.